IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-07-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

C.M.A.No.676 OF 2002

1.M.Kathyayani
2.M.Sireesha
3.M.Aparjitha (Minor)
Minor rep.by her mother
and next friend M.Kathyayani) ... Appellants/Petitioners

-vs-

1.V.Mahendran
2.United India Insurance Co.Ltd.,
Madras-2. ... Respondents/Respondents

(Respondent No.1 was set ex parte by the trial Court)

Appeal under Section 173 of MV Act against the award and decree, dated 24.08.2001, made in M.C.O.P.No.1803 of 1997, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Madras.

For appellant : Mr.S.Gangaram Prasad
For Respondent 2 : Mr.K.S.Narasimhan

J U D G M E N T

This appeal is filed by the claimants, against the disallowed portion of the award, dated 24.08.2001, made in M.C.O.P.No.1803 of 1997, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Madras, in awarding a compensation of Rs.9,34,800/-, as against the claim of Rs.15,00,000/-, for the death of one Janakiram.

2. Claimants are wife and daughters of the deceased.

3. On 14.01.1997, at about 00.10 hours, when the deceased was riding his scooter bearing registration No.TN-04-7158 in Rajaji Salai-Kodimara Salai junction, a lorry bearing registration No.TDL-9869, driven by its driver in a rash and negligent manner, dashed against the said scooter, as a result of which the deceased died on the spot. First respondent is the owner of the lorry, which is insured with second respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Tribunal factually found that the accident occurred due to rash and negligent driving of the lorry by its driver and, therefore, compensation has to be paid by second respondent, who is the insurer of first respondent.

5. No appeal is filed by the respondents against the said finding of the Tribunal and, hence, it has become final.

6. Learned counsel for the appellants/claimants has submitted that the award of Rs.9,34,800/- in toto under different heads is too low and, hence, the compensation should be enhanced.

7. Ex.P-1 is S.S.L.C. Book, pertaining to the deceased, as per which, his date of birth was 21.03.1951. Ex.P-2 is a Certificate, issued by the State Board of Technical Education and Training, certifying that the deceased Janakiram was a diploma holder in mechanical engineering with specialisation in refrigeration and air-conditioning. Ex.P-4 is the post-mortem certificate, which shows that the deceased was aged 48 years. However, considering the entry in Ex.P-1, the date of birth of the deceased has to be taken as 46 years. Ex.P-10 is a xerox copy of the service particulars, as per which, the deceased was working as a Junior Engineer in Corporation of Chennai and drawing a gross salary of Rs.9,416/- per month. Ex.P-11 is a xerox copy of the last pay certificate of the deceased, which shows that the deceased was drawing the above said salary at the time of accident.

8. P.W.4 is an Assistant in Chennai Corporation, who deposed that had the deceased been in service continuously, he would have drawn Rs.16,308/- per month, after promotion as Assistant Executive Engineer.

9. There is no dispute with regard to the promotional avenues, available to the deceased. If the accident had not occurred, as spoken to by P.W.4, the deceased would have got promotion as Assistant Executive Engineer and been drawing Rs.16,308/- per month. Ex.P-10 contains the particulars as to the income of the deceased with reference to pay revision, on the recommendations of Pay Commission.

10. Learned counsel for the appellants garnered support from a Division Bench decision of this Court in Union of India v. Mrs.Suseela and others, 2000 (3) L.W.264, wherein the prospects of a deceased doctor with reference to his increased income on the basis of recommendations of Pay Commission were discussed, on the strength of a judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd. V. Kala Devi, 1996 ACJ 16. The operative portion of the said Division Bench ruling of this Court reads as follows :

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"17.....The next ruling that can be usefully referred to is one reported in New India Assurance Co.Ltd. v. Kala Devi (1996 ACJ 16), wherein the Apex Court, in the concluding paragraph ruled thus :

'The Tribunal awarded a sum of Rs.9780/- as compensation for the death. The claimants preferred an Appeal before the High Court of Delhi. An application was made in the High Court that the compensation be enhanced in view of the revision of the pay scales of the post held by the deceased, by the Third Pay Commission. The High Court, taking into account the revision of pay scales by the Third Pay Scales by the Third Pay Commission, awarded a sum of Rs.1,25,000/- as compensation. The contention of the learned counsel for the appellant is that the High Court had allowed the application of the claimants for enhancement of compensation on the basis of Third Pay Commission Report without affording an opportunity of being heard to the appellant. But, it may be noted that the appellant had filed an appeal against the order allowing the application of the claimants for enhancement of the claim on the basis of the report of the Third Pay Commission and the said appeal was dismissed by the High Court. Having regard to the revised scale of the post held by the deceased, his age and longevity of life as well as all other facts and circumstances of the case, we do not find any justification to interfere with the quantum of compensation awarded by the High Court. The appeal is, therefore, dismissed."

11. In view of the principles laid down in the above decision of the Hon'ble Apex Court, in this case also, the promotional opportunities as well as the future pay scale revisions on the recommendations of Pay Commission should also be considered, for the purpose of fixing compensation. Therefore, the monthly income of the deceased can be fixed at Rs.12,000/-.

12. On the other hand, learned counsel for the respondents cited another decision of the Hon'ble Supreme Court in Tamil Nadu State Transport Corporation Ltd. v. S.Rajapriya & Ors., 2005 (4) Supreme 87, wherein it was decided that while the deceased was aged 38 years and the claimants being widow and minor son, the appropriate multiplier would be '12'.

13. However, learned counsel for the appellants cited a Full Bench decision of the Supreme Court in Supe Devi v. National

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Insurance Co.Ltd., 2002 ACJ 1166, wherein, considering the II Schedule to the amended Motor Vehicles Act,1988, Their Lordships fixed appropriate multiplier as '17', directing that II Schedule may be taken as a guideline.

14. In the said case, the deceased was aged 32 years at the time of accident, but, in the case on hand, the age of the deceased was 46 years and, hence, the appellants cannot take recourse to the benefit of the above said decision.

15. Learned counsel for the appellants also placed reliance upon a Division Bench decision of this Court in National Insurance Company Ltd.v. William Janifar Ajitha & Others, 2007 (1) TNMAC 332 (DB), wherein it has been decided that for fixing compensation, when the deceased was aged 30 years, multiplier 18 has to be adopted. However, the principle contained in the said decision also would not be applicable to the appellants, as the age of the deceased herein was 46 years.

16. Going by the circumstances and the guidelines contained in the decision in Tamil Nadu State Transport Corporation Ltd. v. S.Rajapriya & Ors., 2005 (4) Supreme 87, the appropriate multiplier to be adopted in this case is, 12.

17. If we deduct 1/3 from the monthly salary of Rs.12,000/- of the deceased towards 'personal expenses', the dependency comes to Rs.8,000/-, thereby the annual loss of income for the appellants shall be Rs.96,000/-. Applying the multiplier 12, the total loss of income shall be calculated at Rs.11,52,000/-, as against the sum of Rs.9,04,800/-, awarded by the Tribunal. The Tribunal has also awarded a sum of Rs.15,000/- towards 'loss of consortium', 'loss of love and affection' and 'funeral expenses' and a further sum of Rs.15,000/- towards 'loss of estate', which, in my view, are just and proper.

18. Thus, award of the Tribunal is enhanced by Rs.2,47,200/-, taking the total to Rs.11,82,000/-. As such, the respondents are directed to deposit the enhanced amount with the Tribunal, with interest at 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order. Out of the enhanced amount, first appellant is entitled to Rs.1,50,000/-, second appellant to Rs.47,200/- and third appellant to Rs.50,000/-. Except third appellant, who is a minor, the other appellants are at liberty to withdraw their shares. As regards third appellant, her share shall be kept in Fixed Deposit until she attains majority. On other aspects, award of the Tribunal stands.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. With the above modification of the award, this appeal is allowed in part. No costs.
dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes),
Chennai.

2. The Registrar Court of Small Causes
Chennai

3. The Section Officer,
VR Section, High Court, Madras

+ one cc to MR.S, Mr.S.Gangaram Prasad, Advocate sr no. 40748

bv(co)
nm(09.08.07)

C.M.A.No.676 OF 2002

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/